

SUPREME COURT OF YUKON

Citation: *Cabott v. Urban Systems*, 2015 YKSC 25

Date: 20150508
S.C. No.: 14-A0053
Registry: Whitehorse

BETWEEN:

LESLEY CABOTT

PLAINTIFF

AND

URBAN SYSTEMS LTD.

DEFENDANT

Before the Honourable Mr. Justice R. Wong

Appearances:

Debra L. Fendrick
Grant Macdonald, Q.C.

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT

[1] WONG J. (Oral): This is a summary trial application for a claim of wrongful dismissal.

[2] The plaintiff was terminated without cause after 13 months' employment with the defendant as a professional planner and supervisor for the defendant's northern practice in Whitehorse. In lieu of notice, she was ultimately given a three-and-a-half month severance wages.

[3] The plaintiff is currently 53 years of age with a Masters degree in town and

regional planning. She had prior extensive work experience in planning and development in the Yukon for both the private sector and the City of Whitehorse.

[4] In December 2011, the plaintiff started work with the Morrison Hershfield Group Inc., a national engineering and related infrastructure firm. She opened the Whitehorse office for that employer.

[5] In late 2012, she met up with representatives of the defendant, Urban Systems, at conferences and socially. The defendant company was a firm located in the Yaletown neighbourhood in Vancouver. The plaintiff was originally from the British Columbia Lower Mainland and had a condo in Yaletown, where she would like to eventually move and retire as her immediate family live there.

[6] There is conflicting evidence as to who induced whom for the plaintiff to ultimately join employment with the defendant's firm.

[7] I have concluded, ultimately, there were mutuality of interests beneficially to both parties for the plaintiff to be employed with the defendant. The plaintiff had extensive specialty work experience in the North, for which the defendant wished to expand their business. She was featured to be the face representative for the company with managerial and supervisory responsibilities for other sales employees.

[8] The opportunity for work and advancement was much better than with her previous employer, Morrison Hershfield, with whom she was becoming disenchanted before joining the defendant. Her position with the defendant was a senior managerial role with specialized professional skills. She had received assurance that her employment would be secure with potential opportunity for eventual partnership if justified by her performance.

[9] Given her age and work experience, the plaintiff obtained from the defendant a salary of \$140,000 per year, five weeks vacation, and extended benefits, including RSP contributions.

[10] There was also the attraction of eventual transition of work with the defendant to Vancouver until retirement.

[11] The defendant, however, after 13 months decided for their own reasons to terminate the services of the plaintiff without cause. There was nothing unusual in the manner of termination.

[12] The plaintiff quickly became self-employed as a consultant.

[13] Legal principles in this area are enunciated in the cases of *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140, and *Saalfeld v. Absolute Software Corp.*, 2009 BCCA 18, where it has been generally accepted that short-term employees are entitled to a proportionately longer period of notice.

[14] At para. 15 in *Saalfeld*, the following is found:

[15] ... While B.C. precedents are consistent that proportionately longer notice periods are appropriate for employees dismissed in the first three years of their employment, I see little support for the proposition that five to six months is the norm in short service cases for employees in their thirties or early forties whose function is significant for their employer, but not one of senior management. I further see no support for a floor of six months as the trial judge appears to have understood the respondent's counsel to have suggested to her. That proposition was not put to us. Absent inducement, evidence of a specialized or otherwise difficult employment market, bad faith conduct or some other reason for extending the notice period, the B.C. precedents suggest a range of two to three months for a nine-month employee in the shoes of the respondent when adjusted for age, length of service and job responsibility.

[15] The Court of Appeal in that case determined that the five-month award made by the trial judge was on the very high end of an acceptable range, but not so high that it warranted appellate intervention.

[16] I conclude the following factors are relevant in determining the appropriate notice period:

1. At the time of her hiring, the plaintiff was an established resident and professional planner in Whitehorse. She was not induced to relocate to Whitehorse to take employment with the defendant.
2. The plaintiff's period of employment with Morrison Hershfield was relatively brief before she gave notice of her termination.
3. The plaintiff's notice of termination of Morrison Hershfield was approximately one month.
4. On the evidence, the plaintiff was not induced to join the defendant but, rather, made that decision for her own reasons.
5. When the plaintiff gave her notice to Morrison Hershfield, she was not committed to joining Urban Systems Ltd. but, rather, was considering whether she should join Urban Systems or go into business for herself.
6. Following the termination of her employment by the defendant, the plaintiff did opt to go into business for herself, which was one of the options she considered the time she gave her notice to Morrison Hershfield.
7. The decision by the defendant to terminate the plaintiff's employment was based on legitimate commercial and business reasons, and for no ulterior emotive.

8. The defendant made every effort to carry out the termination of the plaintiff's employment in a discrete, professional, and businesslike manner.

[17] However, when one considers also the plaintiff's age of 53 years, the latter part of her career, the specialized professional skills, the expectation of secure employment and possible eventual transition of work and retirement to Vancouver, together with her role of senior and supervisory management in Whitehorse, I conclude an appropriate period of notice in this case is six months.

[18] I will leave it for counsel to calculate the appropriate net amount for damages with leave to apply for further directions from the Court.

[DISCUSSION RE COSTS]

[19] THE COURT: Perhaps I might leave it on this basis that it would be the usual ordinary costs of this Court unless counsel wish to present further submissions before me.

[20] I commend both counsel for their expeditious presentations in this case.

WONG J.